D.B. CIVIL SPECIAL APPEAL (W) NO.1456/2006

M/s. Deepak Vegpro Private Limited
Vs.
The Commissioner of Income Tax, Income Tax Department, Alwar, Rajasthan & Ors.

Date of Order :: 26.4.2007

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Gunjan Pathak,
Shri Atul Saxena for the appellant.

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This special appeal is directed against the order of the learned Single Judge dated 4.10.2006 in S.B. Civil Writ Petition no.4621/2006 dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the order contained in letter dated 9.5.2006 rejecting its application for stay of demand and the notice dated 16.5.2006 in the matter of recovery of tax, and for a direction upon the respondents to keep the recovery proceedings in abeyance till disposal of the appeal preferred by the appellant against the assessment order.

The case of the appellant is that in terms of Instruction no.96, it is mandatory to stay the recovery proceedings till disposal of the appeal in cases of high-pitched assessment. In support of the case of the appellant counsel relied on a decision of the Supreme Court in Varghese (K.P.) Vs. Income-tax

Officer, (1981) 131 ITR 0597 and of this Court in Maharaja Shri Bhagwat Singhji of Mewar Vs. Income-tax Appellate Tribunal, (1997) 223 ITR 0192.

As per the reply of the respondents, Instruction no.96 has been reviewed and Instruction no.1914 has been issued in terms of which demand can be stayed in the following cases :-

> (a) If the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or court earlier; or
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> (b) If the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer is working); or
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> (c) If the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment.

It has been clarified that even in such cases, stay can be granted only in respect of the amount attributable to such disputed points.

Facts of the case are that the case of the appellant was reopened after scrutiny and when it came to the notice that the appellant had suppressed assessable income, penalty proceeding was initiated. In these circumstances, we do not think the appellant can claim stay of the recovery proceedings as a matter of right.

We thus do not find any error in the order of the learned Single Judge dismissing the writ petition of the appellant. The appeal is dismissed.

The appeals in question said to be pending before the CIT (Appeals), Alwar may be disposed of within two months of receipt of a copy of this order subject to co-operation of the appellant.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-